Congress of the United States

Washington, DC 20515

August 8, 2008

Read Van de Water, Chair
Harry Hoglander, Member
Elizabeth Dougherty, Member
National Mediation Board
1301 K Street NW, Suite 250 East
Washington, DC 20005-7011

Dear Chair Van de Water and Members Hoglander and Dougherty:

We are concerned that the National Mediation Board ("Board") has issued a controversial proposal that may make it harder for workers to retain their union membership in certain airline and railroad mergers. It is particularly troubling that the Board has taken this step shortly after the announcement of the largest proposed airline merger in American history and at a time when several airlines are contemplating significant mergers. We strongly urge the Board to withdraw this troubling new proposal.

Under the Board's current rules and well-established case law, if a unionized group of workers from one airline is larger and "not comparable" in size to the group of workers who perform the same work at the other airline in a merger, the former group's union is automatically certified as the representative of all the workers in the merged unit. The Board has consistently held a unionized group of workers to be "not comparable" if it constitutes 65 percent or more of the merged group of workers.

On July 15, the Board proposed to amend Section 19 of its Representation Manual ("Manual") to change the procedures for a union to expand its certification after a merger occurs. Under the Board's new proposal, a union's certification would only be extended where that union's membership is "more than a substantial majority" of the merged group—a standard that the Board has never used and that appears to be more difficult to satisfy than the current "not comparable" standard. The Board's public announcement provides no explanation for why it proposes to adopt this standard.

We are troubled that the Board would consider adopting a new and uncertain standard for when a union may extend its certification after a merger. For nearly 20 years, the Board has consistently applied the current "not comparable" standard to determine whether a union continues to enjoy majority support from employees subsequent to a merger. Imposing an ambiguous and potentially more difficult standard for automatically extending a certification would cause many employers and unions to engage in costly and contentious representation fights when majority union representation has already been established.

Most important, when a union represents a majority of a combined class or craft after a merger, the Board should err on the side of extending union certifications and collective bargaining agreements. Losing a union's certification after a merger is exceptionally adverse for the workers, who lose their collectively-bargained wages, job security, and benefits, and is disruptive to stable labor relations. Therefore, any rule change that makes it harder for workers to retain their union's certification—essential to maintaining those contractual terms and conditions of employment—is a reason for grave concern for any represented aviation or railroad worker and the public at large. Such a change could even embolden carriers to merge to eliminate their employees' union membership and impose wage and benefit cuts. While such carriers may see very short-term advantages from reduced labor costs when workers no longer have a voice on the job, the public is the medium and long-term loser. The public will bear the costs associated with protracted labor disputes and a demoralized, less effective workforce, due to the disruption and the assault on workers' rights and terms of employment that the proposed Board rule is inviting.

We are also very concerned with the Board's decision to add a final sentence to Section 19.701 regarding the use of authorization cards in extending a union's certification. We understand that the Board intends for this language to codify its current policies, which allow a labor organization to extend its certification through a check of authorization cards or voluntary recognition, when the carrier consents to such procedures. Nevertheless, it is unclear to us whether the proposed language adequately conveys the Board's current policies, even after the Board modified the language on July 30. Moreover, since a labor organization may indeed extend its certification through a check of authorization cards, we fail to see why the Board would adopt language stating that "[a]uthorization cards . . . may not be used towards getting a certification extended."

For these reasons, we strongly urge the Board to immediately withdraw its proposal to change its merger procedures. If the Board is unwilling to withdraw the proposal, the Board should at the very least extend the due date for public comments and hold a public hearing, given the importance of the issue for tens of thousands of aviation and railroad workers. Moreover, if the Board decides to finalize its proposed rule on mergers, we will strongly consider enacting legislation to overhaul the Board's authority over merger procedures under the Railway Labor Act.

Finally, in light of the Board's failure to explain the basis for its proposed changes and the troubling timing of the Board's announcement, we request that the Board provide us with written answers to the following questions by August 15.

(1) Did any carrier ask the Board to propose any of the changes in the July 15, 2008 proposal, including adding Section 19.701 to the Manual?

(2) Why did the Board propose the changes to its mergers procedures at this time, and why did the Board decide to issue a new standard that only applies to mergers between a represented carrier and a non-represented carrier?

We appreciate your consideration of our requests and look forward to hearing your response. If you have any questions, please contact Stacie Soumbeniotis, House Committee on Transportation and Infrastructure, at 202-225-9161; Peter Romer-Friedman, Senate Committee on Health, Education, Labor, and Pensions at 202-224-5441; or Jody Calemine, House Committee on Education and Labor, at 202-225-3725.

Sincerely,

James L. Oberstar, Chairman
House Committee on
Transportation and Infrastructure

Edward M. Kennedy, Chairman
Senate Committee on Health,
Education, Labor, and Pensions

George Miller, Chairman
House Committee on
Education and Labor